

To: Kevin Graves, DWQ UST Program Task Force
From: Markus Niebanck, Task Force Member (participating for Sierra Club)
Re: Draft Closure Resolution – **Do Not Support As Written**
Date: September 21, 2009

This submittal follows our conversations of the last three weeks. Please include this opinion with the SWRCB transmittal.

For clarity, please in no way interpret what I send as being in opposition to the benefits of applying science and common sense to the administration of environmental regulations in California. That is not the intent of this opinion and it must not be construed that way. Also, as we have discussed at length, there are *many* aspects of the UST Program that require thoughtful attention; the issue of closure criteria is but a single one.

- 1) This transmittal to the SWRCB **should not** imply that the collective Task Force worked together to identify site closure criteria as the most pressing issue challenging the UST Program. We have identified the closure process as an issue worthy of examination – though it is just one among several.
- 2) The authors of the proposed resolution ask the SWRCB Boards “to apply the decision framework used by the State Board in its UST closure orders to all cases.” The accompanying draft resolution, however, does not sufficiently describe the complete intent of Resolution 92-49 and, as written, may direct oversight agencies to apply one aspect of the resolution at the expense of the other, to the detriment of programmatic and regulatory priorities.

The draft resolution illuminates and amplifies the aspect of 92-49 that establishes policy regarding water quality objectives (WQO) in UST corrective action cases, specifically that WQO need not necessarily be achieved at the time of case closure. The authors of the draft resolution have not, however, reemphasized the other important aspect of 92-49, namely its assumption that reasonable and appropriate corrective action is taken in all instances, and that the consideration of WQO attainment time frames is given at the conclusion of such a response action.

Specifically, in Be It Resolved Section III, 92-49 states:

The Regional Water Board shall implement the following procedures to ensure that dischargers shall have the opportunity to select cost-effective methods for detecting discharges or threatened discharges and methods for cleaning up or abating the effects thereof.;

And in III G:

Ensure that dischargers are required to clean up and abate the effects of discharges in a manner that promotes attainment of either background water quality, or the best water quality which is reasonable if background levels of water quality cannot be restored, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible; in approving any alternative cleanup levels less stringent than background,

- 3) In Task Force meetings the authors of the draft resolution have indicated that the omission of language illuminating the intent of 92-49 with respect to the benefits of appropriate corrective action owes only to their desire to complete this petition quickly. They have indicated that this intention of 92-49 is implicit in the draft resolution and that the benefits of corrective action are obvious and should speak for themselves.

There are members of the Task Force that do not believe an *implicit* reference to the 92-49 intention regarding the need for and benefit of appropriate corrective action is sufficient.

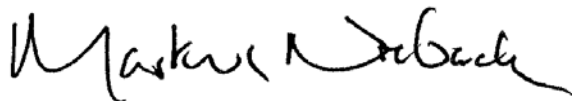
Accordingly, it is recommended that the draft resolution recommendation be modified as follows (addition in bold underlined text):

Direction to Agencies:

When considering whether a UST cleanup case should be closed, Agencies shall apply the decision framework established in State Water Board Res. 92-49, which incorporates State Water Board Resolutions 68-16, 88-63 and UST closure orders. Consistent with the decision framework in the State Water Board UST closure orders, a UST case should be closed if **reasonable and appropriate corrective action has been taken**, the residual contamination does not pose a threat to human health or safety, is localized and unlikely to migrate beyond the current spatial extent, and it is unlikely that the affected shallow groundwater will be used as a source of drinking water in the timeframe reasonably necessary to achieve water quality objectives.

Please note – this opinion is not necessarily that of the Sierra Club. Due to the demands of the two Task Forces I have not yet been able to convene a meeting to describe this resolution as written or its implication. I intend to have this meeting in the near future, and while I anticipate general agreement with what I have written here, I cannot represent that this transmittal is comprehensively reflective of their concerns.

Thank you.

A handwritten signature in black ink, appearing to read "Mark N. Saback". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.